

OPEN RECORDS AND MEETINGS OPINION
2004-O-23

DATE ISSUED: October 27, 2004

ISSUED TO: Stark County

CITIZEN'S REQUEST FOR OPINION

This office received a timely request for an opinion under N.D.C.C. § 44-04-21.1 from Mr. Thomas Dietz asking whether Stark County violated N.D.C.C. § 44-04-18 by failing to grant access to marriage records.

FACTS PRESENTED

On September 10, 2004, Mr. Dietz requested and was denied access to certain marriage records from the Stark County recorder. The recorder informed Mr. Dietz that the records contained social security numbers and were therefore no longer public records. At Mr. Dietz's request, the recorder provided him with a written explanation, on September 13, 2004, of the reason she refused to grant him access to the marriage records. The Stark County recorder informed this office that she has refused access to marriage records since April 21, 2003, the date a law making social security numbers contained in vital records confidential became effective.

ISSUE

Did the Stark County recorder violate N.D.C.C. § 44-04-18 by failing to grant access to certain marriage records?

ANALYSIS

All records of a public entity are open to the public unless "otherwise specifically provided by law." N.D.C.C. § 44-04-18(1); N.D. Const. art. XI, § 6. The definition of "public entity" includes a public or governmental "agency" of a county. N.D.C.C.

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§ 44-04-17.1(10), (12)(b). Therefore, the records of a county recorder are open to the public unless a law specifically provides otherwise.

Marriage records are vital records. Except for the information described in N.D.C.C. § 23-02.1-27, information in vital records is available to the public under N.D.C.C. § 44-04-18. N.D.A.G. 2002-L-06; N.D.C.C. § 23-02.1-27. Section 23-02.1-27, N.D.C.C., provides “[a]n individual’s social security number contained in vital records may not be disclosed except to the individual to whom it pertains, that individual’s lawful agent or guardian, or by order of a court.” N.D.C.C. § 23-02.1-27.¹ Mr. Dietz has not limited his request to marriage records regarding himself or individuals for whom he is a lawful agent or guardian, nor is he seeking records under a court order. Rather, he has made a request for all marriage records during certain specified time periods.

Access to a public record must be provided upon request. N.D.C.C. § 44-04-18(2). A public entity may not deny a request for an open record because the record also contains confidential or closed information. N.D.C.C. § 44-04-18(2). Rather, the entity is required to redact or withhold the confidential or closed information² and disclose the rest of the record. N.D.C.C. § 44-04-18.10; N.D.A.G. 98-O-22.

In this case, the recorder refused to grant Mr. Dietz access to marriage license records because they contained the bride and groom’s social security numbers. Instead of redacting the social security numbers and providing access to the remainder of the record, the recorder denied access to the entire record. Therefore, it is my opinion that the recorder violated N.D.C.C. § 44-04-18, by failing to grant access for inspection to marriage records after redacting the social security numbers of the bride and groom from the records.

CONCLUSION

The Stark County recorder violated N.D.C.C. § 44-04-18 by failing to grant access to certain marriage records.

¹ N.D.C.C. §§ 23-02.1-27 became effective April 21, 2003. 2003 N.D. Sess. Laws, ch. 382, § 16.

² The public entity may not charge for redacting or excising confidential information. N.D.C.C. § 44-04-18(2).

STEPS NEEDED TO REMEDY VIOLATIONS

The Stark County recorder, after redacting social security numbers as set forth in this opinion, must provide Mr. Dietz with access to the marriage records requested.

Failure to take the corrective measures described in this opinion within seven days of the date this opinion is issued will result in mandatory costs, disbursements, and reasonable attorney fees if the person requesting the opinion prevails in a civil action under N.D.C.C. § 44-04-21.2. N.D.C.C. § 44-04-21.1(2). It may also result in personal liability for the person or persons responsible for the noncompliance. Id.

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